

15 November 1974

MEMORANDUM FOR THE RECORD

SUBJECT: Congressional Status Report

1. The current session of Congress has dealt with a number of proposed bills and amendments to bills that affect the Intelligence Community. Following is a summary of these bills and amendments, their current status, and a "best-guess" on their futures. The Sections on Covert Action and Legislative Oversight were prepared by the Legislative Counsel's office.

2. Protection of Intelligence Sources and Methods

SUMMARY:

The proposed legislation grants to the Director of Central Intelligence the authority to issue rules and regulations limiting the dissemination of information related to intelligence sources and methods of collection. It provides criminal penalty for the disclosure of such information to unauthorized persons. Such penalties would be limited to those persons given access to the information by virtue of their relationships with the Government, such as officers, employees, contractors, etc.

In order to provide adequate safeguards to an accused, to prevent damaging disclosures during the course of prosecution, and to prevent prosecution with respect to information unreasonably designated, the legislation provides for in camera review by the court to review the reasonableness of the designation for limited distribution. It also provides for injunctive relief in those instances where unauthorized disclosure is threatened and serious damage to the intelligence collection effort would result.

This legislation, if enacted, would provide the Director of Central Intelligence with legal sanctions to enable him to implement his responsibility under the National Security Act of 1947, as amended, to protect intelligence sources and

methods. At the same time, the legislation recognizes American standards of maximum feasible freedom of information and protection of individual rights.

STATUS:

This legislation was sent to the Office of Management and Budget in January 1974. It has not yet been cleared for submission to the Congress. The DCI will submit the proposal to President Ford for possible inclusion in the President's legislative program.

3. Amendments to the National Security Act of 1947, as Amended.

SUMMARY:

Senator Proxmire on June 3, 1974, introduced an amendment to the Department of Defense Appropriation Authorization Act that would have amended the National Security Act of 1947 in a number of ways affecting the Intelligence Community. One of these was to add the word "foreign" to modify the word "intelligence" whenever it appears in the Act. Mr. Colby had suggested such a clarification of the Agency's intelligence responsibilities and supported this measure. After a lengthy floor debate a modified version of the Proxmire amendment was passed which included this provision and also repeated the prohibition that keeps the CIA from carrying out within the U.S. any police, law-enforcement, or internal security-type mission or from participating in any illegal activity within the U.S. These provisions accorded fairly closely with a bill proposed by Senator Stennis and supported by the DCI, except that the final provision seemed both gratuitous and insulting.

A similar bill is under consideration in the House where Chairman Nedzi of the Subcommittee on Intelligence of the House Committee on Armed Services has held hearings, which were very sparsely attended.

STATUS:

The Proxmire amendment to the National Security Act was dropped during the House-Senate conference on the Defense Appropriations Authorization Act. Senator Stennis has agreed to hold hearings on a clean bill, but no action is

likely this session. Chairman Nedzi will determine what further action may be feasible this Congress after Congress returns on 18 November.

4. Freedom of Information Act Amendments (HR 12471)

SUMMARY:

The principal objection to this bill from the point of view of the Intelligence Community is that it amends the exemption in the original law granted for "secret national security or foreign policy information." The new provisions make it possible for a judge to conduct an in camera review of contested documents to determine whether they have been properly classified. The legislative history of the bill and the floor debate in both houses add that judges are expected to give "weight" to affidavits submitted by agency and department heads certifying that the requested information is properly classified. This, of course, does not preclude a judge from satisfying himself by examining the contested documents, in effect substituting his own judgment for that of the DCI. This raises the specter of Federal district judges across the country perusing any classified documents that might be requested by citizens -- or even foreigners -- exercising their rights under the Freedom of Information Act. Should such a review result in a judicial decision to force the DCI to release classified documents, it could well cause the loss of critical intelligence sources. It would also result in a direct conflict with the DCI's statutory responsibilities to protect intelligence sources and methods.

STATUS:

Congress passed this bill and sent it to the President on October 7. He subsequently vetoed it. The wide margins by which it passed both houses, however, makes it likely that the veto will be overturned, although there is some slim hope that the Senate may sustain it. President Ford has submitted remedial language for incorporation in a revised bill in the hope that an up-or-down vote on the veto can be avoided in the Senate, and instead that a compromise can be adopted. Strategy in the next few weeks will be critical on this issue. If the veto is overturned, a test case would be likely to arise as soon as the 90-day waiting period has expired.

5. The Right of Privacy Bills (S.3418 and HR. 16373)

SUMMARY:

These bills are aimed at broadening an individual's ability to have access to files maintained on him by the Government. An exemption has been granted for information dealing with national security and foreign policy. However, another section of the bill (Sec. 553, Title V) is in conflict with this exemption because it mandates that agencies must hold opening hearings on "rule-making," i.e., any rules or regulations at all. This is clearly aimed at regulatory agencies, but the language in the bills is not specific.

STATUS:

S.3418 is scheduled for floor debate after the election recess. Senator Ervin may, if he chooses, introduce "technical amendments" to the reported bill and grant the CIA an exemption from most of the bill, including rule-making. The House bill is scheduled for debate immediately after recess as well, and Congresswoman Abzug intends to introduce an amendment to knock out all of the Agency's exemptions. This is almost sure to be resoundingly defeated. The two bills differ sufficiently so that the conference committee will have considerable latitude in working out changes. The main effort will be to avoid a major floor debate on the CIA exemptions and then to work out language that is acceptable in the conference committee, either for inclusion in the legislative history or in altered wording. (Note: The General Counsel has been queried whether we even need to oppose rule-making at all. It is possible that a one-time pro-forma compliance would be all that is needed.)

6. Open Budget

SUMMARY:

Senator Proxmire introduced an amendment to the Defense Appropriations bill (S.3000) that would have required the Director of Central Intelligence to submit an unclassified report each year to the Congress disclosing the total national intelligence program budget. The argument against the amendment was based on the reasoning that disclosure of the overall figure was meaningless if the component parts of the

budget were not released and would only lead to additional requests for more detail. Moreover, disclosing this figure would, over several years, reveal trends in intelligence spending of value to our adversaries.

STATUS:

This amendment was defeated on June 4, 1974, by a vote of 33 yeas and 55 nays. Given Senator Proxmire's continuing interest in this matter, the issue is very likely to come up again in the next session.

7. Electronic Surveillance and National Security Wiretaps (S.2820)

SUMMARY:

This bill would require judicial approval of all national security wiretaps and electronic surveillance. This specifically would include the President's authorization of such measures to obtain foreign intelligence. The bill's principal sponsor, Senator Nelson, argues that warrantless wiretapping violates individual rights under the 4th Amendment to the Constitution. The bill is adamantly opposed by the Attorney General on the grounds that it is an encroachment on the President's inherent constitutional authority to engage in wiretapping, without a warrant, in matters of foreign intelligence as part of his constitutional charge to defend the nation.

STATUS:

The Senate Judiciary Subcommittee on Criminal Laws and Procedures held hearings on the bill (and other subcommittees have had hearings on similar measures). Additional hearings may take place, but the strong opposition to the measure by very senior senators (particularly Senator McClellan who chairs the Subcommittee) indicates that no action will occur in the near future.

8. Classification System Revisions (HR 12004)

SUMMARY:

This bill would replace the existing classification system established by Executive Order 11652 with a statutory classification system. The bill, as drafted, would severely

conflict with the DCI's responsibility to protect sources and methods. It would require that all SECRET and CONFIDENTIAL information be declassified in two and one years, respectively. Much intelligence information would not meet the standard set for TOP SECRET, which in any case is declassified after three years. No intelligence service could operate if sources knew their information would become public knowledge in one to three years. Moreover, a proposed Classification Review Board could override even a Presidential justification that continued safeguarding was essential. The bill also raises cover problems by mandating that each agency furnish the names and addresses to a Review Commission of all people authorized to classify.

STATUS:

Mr. Colby has testified against the bill at hearings before the House Foreign Operations and Government Information Subcommittee. The bill is back in the subcommittee for review and revision and will not be scheduled for mark-up this session. A clean bill will be introduced in the next Congress, hopefully containing the needed modifications for protecting intelligence sources and methods.

Congressional Proposals on Covert Action
and Legislative Oversight

9. COVERT ACTION

a. Abourezk Amendment

SUMMARY:

Senator Abourezk introduced a floor amendment to the Foreign Assistance Act (S.3394) which would have prohibited funds being used by any U.S. Governmental agency to carry out any activities which would violate or encourage violation of the laws of the U.S. or the country involved. Excluded were activities necessary to national security which were intended solely for intelligence collection.

STATUS:

Defeated on Senate floor on October 2 by a vote of 68-17. Senators Humphrey, Stennis, Goldwater, Case, Baker, and Symington spoke against amendment.

b. Hughes Amendment

SUMMARY:

Senator Hughes also introduced a floor amendment to the Foreign Assistance Act (S.3394) dealing with covert operations, but much less restrictive than Senator Abourezk's. It would bar funds for covert operations (defined to exclude intelligence gathering) unless the President finds the operation to be vital to the defense of the U.S., and transmits a report of his findings, with a description of the operation, to the Congressional intelligence oversight committees. These procedural safeguards would be eliminated during a war.

STATUS:

The amendment was accepted by Senator Stennis and passed on October 2 by voice vote. However, later on October 2, the entire Foreign Assistance bill was recommitted to the Foreign Relations Committee. The recommitted bill is still in Committee.

c. Holtzman Amendment

SUMMARY:

Ms. Holtzman introduced a House floor amendment to the 1975 Continuing Appropriations resolution (J.J. Res. 1131). The amendment would have banned the use of any money appropriated under the joint resolution for use by CIA to "destabilize" or undermine any government.

STATUS:

Representatives Mahon, Cederberg, Rhodes, Hunt, and Conlan spoke against the amendment, which was defeated 291-108 on September 24.

d. House Amendment to the Foreign Assistance Act (Section 27)

SUMMARY:

On October 10 the House Foreign Affairs Committee reported for floor action its version of the Foreign Assistance Act amendments (H.R. 17234). Included was a section patterned after the Hughes Amendment. This provision bans operations in foreign countries, except intelligence collection, unless the President finds the operation to be important to the national security, and submits a timely report describing the operation to Congress. The report is to go to the "appropriate committees" of the Congress, specifically including the foreign affairs committees. The provisions are to be suspended during a war.

STATUS:

This bill has not yet come before the entire House.

10. OVERSIGHT

There are three distinct approaches in this category: bills which attempt to supplement (A below), supplant (B below) or, study (C below) existing oversight procedures.

A. Supplement

1. Bolling-Hansen House Committee Reform Amendments

SUMMARY:

Representative Zablocki introduced a floor amendment to the Committee Reform Amendments. Zablocki's amendment added to existing procedures by providing the Foreign Affairs Committee a special oversight function of reviewing and studying "intelligence activities relating to foreign policy." Nedzi made a floor statement in support, stating that the Zablocki amendment conformed to the agreement between Dr. Kissinger, Mr. Colby, and Chairmen Hebert and Morgan. The earlier language which would have given Foreign Affairs jurisdiction over military and foreign intelligence was dropped.

STATUS:

The Zablocki amendment passed by voice vote, and the entire Committee Reform Amendments were agreed to by the House on 8 October.

B. Supplant

1. Baker/Weicker bill (S.4019)

SUMMARY:

This bill, introduced with much fanfare, would create a Senate-House Joint Committee on Intelligence Oversight to supplant Armed Services Committee jurisdiction. The Committee would have 14 members, appointed by the leadership, and the chairmanship would alternate between the House and Senate for each Congress. The jurisdiction of the Committee would extend to CIA, FBI, Secret Service, DIA, NSA and all other governmental activities pertaining to intelligence gathering or surveillance of persons. Chiefs of all named departments would be required to keep the Committee fully and currently informed of all activities.

STATUS:

Referred to Committee on Government Operations; hearings are planned after the recess.

2. Harrington, Resolution (H.Res.552)

SUMMARY:

The resolution would create a new House Committee on the Central Intelligence Agency and terminate existing CIA jurisdiction in the House Armed Services Committee. The proposed Committee would consist of five members of Armed Services, five members of Foreign Affairs, and five other House members.

STATUS:

Referred to House Rules Committee; inactive.

3. Harrington Resolution (H.Res.1231)

SUMMARY:

This resolution would create a new House Committee on Intelligence Operations, consisting of five members of Armed

Services, five members of Foreign Affairs, and five members of Appropriations. This Committee would have jurisdiction over the entire Intelligence Community and all matters relating to foreign intelligence.

STATUS:

Referred to House Rules Committee; inactive.

4. Senator Hathaway's Joint Committee on Information and Intelligence

SUMMARY:

This resolution would create a Senate-House Joint Committee which would have oversight of CIA and all other intelligence and information agencies of the U.S. Government.

STATUS:

Referred to Armed Services Committee; inactive.

C. Study

1. Mondale Resolution (S.Res.404)

SUMMARY:

This resolution would create a Senate Select Committee on Intelligence Policy, composed of five members of Armed Services, five members of Foreign Relations, and five other Senators. The Select Committee would be authorized to examine U.S. intelligence policies and operations, to determine the role of intelligence decision-making, and evaluate the impact of intelligence on national security and foreign policy. The Committee is to report to the Senate by June 30, 1975.

STATUS:

Referred to Armed Services Committee.

2. Mathias and Mansfield Resolution (S.Res.419)

SUMMARY:

This resolution would create an eight-member (selected at-large) Select Committee to Study Governmental Operations With Respect to Intelligence Activities. Committee is instructed to study and investigate all domestic and foreign intelligence activities of the U.S. Government and past effect and future role of such activities. Report due two years after enactment.

STATUS:

Referred to Committee on Government Operations.

3. Humphrey bill (S.1547)

SUMMARY:

This bill would create a Joint Committee on National Security, consisting of the Speaker, majority and minority members of each House, the chairman and ranking minority members of the Armed Services, Appropriations, foreign affairs, Joint Atomic Energy Committees, three other Representatives, and three other Senators. Functions of the Committee are to study foreign, domestic, and military national security policies, study National Security Council, and study Government classification practices, and report periodically to each House on the Committee's findings.

STATUS:

Inactive. Bill recently transferred from Armed Services to Government Operations at Humphrey's request.

4. Harrington Resolution (H.Res.1232)

SUMMARY:

This resolution would authorize House Committee on Foreign Affairs to conduct a complete investigation of CIA.

STATUS:

Referred to Committee on Rules; inactive.

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